

96TH CONGRESS
1ST SESSION

H. R. 4000

[Report No. 96-589, Part I]

To amend the Social Security Act with respect to health programs authorized under it, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 1979

Mr. RANGEL (for himself, Mr. CORMAN, Mr. VANIK, and Mr. FORD of Tennessee) introduced the following bill; which was referred jointly to the Committees on Ways and Means and Interstate and Foreign Commerce

NOVEMBER 5, 1979

Additional sponsors: Mr. ROSTENKOWSKI and Mr. BRODHEAD

NOVEMBER 5, 1979

Reported from the Committee on Ways and Means with an amendment and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Social Security Act with respect to health programs authorized under it, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 EXPANDED MEMBERSHIP OF PROFESSIONAL STANDARDS
 2 REVIEW ORGANIZATIONS

3 SECTION 1. Section 1152(b)(1)(A) of the Social Security
 4 Act is amended—

5 (1) by inserting “and, if the organization so elects,
 6 of other health care practitioners engaged in the prac-
 7 tice of their professions in such area who hold inde-
 8 pendent hospital admitting privileges,” after the
 9 comma in clause (ii); and

10 (2) by inserting “(except as otherwise provided
 11 under section 1155(c))” after “does not” in clause (vi).

12 REGISTERED NURSE AND DENTIST MEMBERSHIP ON
 13 STATEWIDE COUNCIL ADVISORY GROUP

14 SEC. 2. Section 1162(c)(1) of the Social Security Act is
 15 amended by inserting “(including at least one registered pro-
 16 fessional nurse and at least one doctor of dental surgery or of
 17 dental medicine)” after “representatives”.

18 NONPHYSICIAN MEMBERSHIP ON NATIONAL
 19 PROFESSIONAL STANDARDS REVIEW COUNCIL

20 SEC. 3. (a) Section 1163(a)(1) of the Social Security Act
 21 is amended by inserting “one doctor of dental surgery or of
 22 dental medicine, one registered professional nurse, and one
 23 other health practitioner (other than a physician as defined in
 24 section 1861(r)(1)),” after “physicians,”.

1 (b) Section 1163(a)(2) of such Act is amended by strik-
2 ing out "four members" and inserting "five members" in lieu
3 thereof.

4 (c) Section 1163(a)(3) of such Act is amended by insert-
5 ing "physician" after "the".

6 (d) Section 1163(b) of such Act is amended by striking
7 out "Members" and inserting in lieu thereof "Physician
8 members".

9 (e) Section 1173 of such Act is amended by striking out
10 "(except sections 1155(e) and 1163)" and inserting in lieu
11 thereof "(except section 1155(e))".

12 ADVISORY COMMITTEE TO THE NATIONAL PROFESSIONAL
13 STANDARDS REVIEW COUNCIL

14 SEC. 4. Section 1163 of the Social Security Act is
15 amended by adding at the end thereof the following new sub-
16 section:

17 "(f)(1) The Council shall be advised and assisted in car-
18 rying out its functions by an advisory committee (of not less
19 than seven nor more than fifteen members) which shall be
20 made up of representatives of health care practitioners (other
21 than physicians) for whose services payment may be made
22 (in whole or in part) under any program established by or
23 pursuant to this Act.

1 “(2) The Secretary shall by regulations provide the
2 manner in which members of such advisory committee shall
3 be selected and the terms of service.

4 “(3) The expenses reasonably and necessarily incurred,
5 as determined by the Secretary, by such committee in carry-
6 ing out its functions shall be considered to be expenses neces-
7 sarily incurred by the National Professional Standards
8 Review Council.”.

9 HOSPITAL PROVIDERS OF LONG-TERM CARE SERVICES

10 (~~“SWING-BEDS”~~)

11 SEC. 5. (a)(1) Title XVIII of the Social Security Act is
12 amended by adding the following new section at the end
13 thereof:

14 “HOSPITAL PROVIDERS OF EXTENDED CARE SERVICES

15 “SEC. 1882. (a)(1) Any hospital (other than a hospital
16 which has in effect a waiver of the requirement imposed by
17 section 1861(c)(5)) which has an agreement under section
18 1866 may (subject to subsection (b)) enter into an agreement
19 with the Secretary under which its inpatient hospital facilities
20 may be used for the furnishing of services of the type which,
21 if furnished by a skilled nursing facility, would constitute
22 post-hospital extended care services.

23 “(2)(A) Notwithstanding any other provision of this title,
24 payment to any hospital for services furnished under an
25 agreement entered into under this section shall be based upon

1 the reasonable cost of the services as determined under sub-
2 paragraph (B).

3 “(B)(i) The reasonable cost of the services consists of
4 the reasonable cost of routine services (determined under
5 clause (ii)) and the reasonable cost of ancillary services (de-
6 termined under clause (iii)).

7 “(ii) The reasonable cost of routine services furnished
8 during any calendar year by a hospital under an agreement
9 under this section is equal to the product of (I) the number of
10 patient days during the year for which the services were fur-
11 nished, and (II) the average reasonable cost per patient-day,
12 such average reasonable cost per patient-day being the aver-
13 age rate per patient-day paid for routine services during the
14 previous calendar year under title XIX to skilled nursing
15 facilities located in the State in which the hospital is located
16 and which have agreements entered into under section
17 1902(a)(28).

18 “(iii) The reasonable cost of ancillary services shall be
19 determined in the same manner as the reasonable cost of an-
20 cillary services provided for inpatient hospital services.

21 “(b) The Secretary may not enter into an agreement
22 under this section with any hospital unless—

23 “(1) for a period (of not less than twelve months)
24 specified by the Secretary which period immediately
25 precedes the date the agreement is entered into, the

1 hospital has had an average daily occupancy rate of
2 less than 60 percent, and

3 “(2) the hospital has been granted a certificate of
4 need for the provision of long-term care services from
5 the State health planning and development agency
6 (designated under section 1521 of the Public Health
7 Service Act) for the State in which the hospital is lo-
8 cated.

9 “(c) An agreement with a hospital under this section
10 shall, except as otherwise provided under regulations of the
11 Secretary, be of the same duration and subject to termination
12 on the same conditions as are agreements with skilled nurs-
13 ing facilities under section 1866 (unless the hospital fails to
14 satisfy the requirements specified in subsection (b)) and shall,
15 where not inconsistent with any provision of this section,
16 impose the same duties, responsibilities, conditions, and limi-
17 tations, as those imposed under such agreements entered into
18 under section 1866; except that no such agreement with any
19 hospital shall be in effect for any period during which the
20 hospital does not have in effect an agreement under section
21 1866, or where there is in effect for the hospital a waiver of
22 the requirement imposed by section 1861(c)(5). A hospital
23 whose agreement under this section has been terminated
24 shall not be eligible to undertake a new agreement until a
25 two-year period has elapsed from the termination date.

1 “(d) Any agreement with a hospital under this section
2 shall provide that payment for services will be made only for
3 services for which payment would be made as post-hospital
4 extended care services if those services had been furnished by
5 a skilled nursing facility under an agreement entered into
6 under section 1866; and any individual who is furnished serv-
7 ices, for which payment may be made under an agreement
8 under this section, shall, for purposes of this title (other than
9 this section), be deemed to have received post-hospital ex-
10 tended care services in like manner and to the same extent as
11 if the services furnished to him had been post-hospital ex-
12 tended care services furnished by a skilled nursing facility
13 under an agreement under section 1866.

14 “(e) During a period for which a hospital has in effect an
15 agreement under this section, in order to allocate routine
16 costs between hospital and long-term care services for pur-
17 poses of determining payment for inpatient hospital services,
18 the total reimbursement received for routine services from all
19 classes of long-term care patients (including title XVIII, title
20 XIX, and private pay patients) shall be subtracted from the
21 hospital's total routine costs before calculations are made to
22 determine title XVIII reimbursement for routine hospital
23 services.

24 “(f) With respect to a hospital furnishing (under an
25 agreement in effect under this section) of services of the type

1 which, if furnished by a skilled nursing facility, would consti-
2 tute post-hospital extended care services—

3 “(1) the hospital shall be required to meet all the
4 requirements of this Act that a skilled nursing facility
5 would be required to meet with respect to the furnish-
6 ing of such services; and

7 “(2) the provisions of such services shall be treat-
8 ed and subject to the same requirements of this Act as
9 post-hospital extended care services furnished by a
10 skilled nursing facility under this title,
11 except such requirements of section 1861(j) and such other
12 requirements as the Secretary determines to be inappropriate
13 in the case of these services being furnished by a hospital
14 under this section.”.

15 (2) Within three years after the date of the enactment of
16 this Act, the Secretary shall submit to the Congress a report
17 evaluating the program established by the amendment made
18 by paragraph (1) of this subsection and shall include in such
19 report an analysis of—

20 (A) the extent and effect of the agreements under
21 the program on availability and effective and economi-
22 cal provision of long-term care services; and

23 (B) whether the program should be continued.

24 (b) Title XIX of the Social Security Act is amended by
25 adding after section 1912 the following new section:

1 “HOSPITAL PROVIDERS OF SKILLED NURSING AND
2 INTERMEDIATE CARE SERVICES

3 “SEC. 1913. (a) Notwithstanding any other provision of
4 this title, payment may be made, in accordance with this sec-
5 tion, under a State plan approved under this title for skilled
6 nursing facility services and intermediate care facility serv-
7 ices furnished by a hospital which has in effect an agreement
8 under section 1882.

9 “(b)(1) Payment to any such hospital, for any skilled
10 nursing or intermediate care facility services furnished, shall
11 be at a rate equal to the average rate per patient-day paid for
12 routine services during the previous calendar year under this
13 title to skilled nursing and intermediate care facilities located
14 in the State in which the hospital is located. The reasonable
15 cost of ancillary services shall be determined in the same
16 manner as the reasonable cost of ancillary services provided
17 for inpatient hospital services.

18 “(2) With respect to any period for which a hospital has
19 an agreement under section 1882, in order to allocate routine
20 costs between hospital and long-term care services, the total
21 reimbursement for routine services received from all classes
22 of long-term care patients (including title XVIII, title XIX,
23 and private pay patients) shall be subtracted from the hospi-
24 tal total routine costs before calculations are made to deter-
25 mine title XIX reimbursement for routine hospital services.”.

1 (e) The amendments made by this section become effec-
2 tive on the date on which final regulations, promulgated by
3 the Secretary to implement the amendments, are first issued;
4 and those regulations shall be issued not later than the first
5 day of the sixth calendar month following the month in which
6 this Act is enacted.

7 COORDINATED AUDITS UNDER THE SOCIAL SECURITY ACT

8 SEC. 6. (a) Title XI of the Social Security Act is
9 amended by inserting after section 1126 the following new
10 section:

11 “COORDINATED AUDITS

12 “SEC. 1127. If an entity provides services reimbursable
13 on a cost-related basis under title V or XIX, as well as serv-
14 ices reimbursable on such a basis under title XVIII, the Sec-
15 retary shall require, as a condition for payment to any State
16 under title V or XIX with respect to administrative costs
17 incurred in the performance of audits of the books, accounts,
18 and records of that entity, that these audits be coordinated
19 through common audit procedures with audits performed with
20 respect to the entity for purposes of title XVIII. The Secre-
21 tary shall specify by regulation such methods as he finds fea-
22 sible and equitable for the apportionment of the cost of co-
23 ordinated audits between the program, established under title
24 V or XIX and the program established under title XVIII.
25 Where the Secretary finds that a State has declined to par-

1 participate in such a common audit with respect to title V or
 2 XIX, he shall reduce the payments otherwise due such State
 3 under such title by an amount which he estimates to be the
 4 amount that would have been apportioned to the State under
 5 the title (for the expenses of the State incurred in the
 6 common audit) if it had participated in the common audit.”.

7 (b)(1) Section 1902(a) of the Social Security Act is
 8 amended—

9 (A) by striking out “and” at the end of paragraph
 10 (39);

11 (B) by striking out the period at the end of para-
 12 graph (40) and inserting in lieu thereof “; and”; and

13 (C) by inserting after paragraph (40) the following
 14 new paragraph:

15 “(41) provide (A) that the records of any entity
 16 participating in the plan and providing services reim-
 17 bursable on a cost-related basis will be audited as the
 18 Secretary determines to be necessary to insure that
 19 proper payments are made under the plan, (B) that
 20 such audits, for such entities also providing services
 21 under part A of title XVIII, will be coordinated and
 22 conducted jointly (to such extent and in such manner
 23 as the Secretary shall prescribe) with audits conducted
 24 for purposes of such part, and (C) for payment of the
 25 proportion of costs of each such common audit of such

1 an entity equal to the proportion of total program
2 benefit payments to the entity (by all third-party
3 payers participating in the common audit for the period
4 being audited) which are payments under this title.”.

5 (2) The amendments made by paragraph (1) shall apply
6 to medical assistance provided, under a State plan approved
7 under title XIX of the Social Security Act, on and after the
8 first day of the first calendar quarter beginning more than 30
9 days after the date of enactment of this Act.

10 (e)(1) Section 505(a) of the Social Security Act is
11 amended—

12 (A) by striking out “and” at the end of paragraph
13 (14);

14 (B) by striking out the period at the end of para-
15 graph (15) and inserting in lieu thereof “; and”; and

16 (C) by inserting after paragraph (15) the following
17 new paragraph:

18 “(16) provides (A) that the records of any entity
19 participating in the plan and providing services reim-
20 bursable on a cost-related basis will be audited as the
21 Secretary determines to be necessary to insure that
22 proper payments are made under the plan, (B) that
23 under part A of title XVIII, will be coordinated and
24 conducted jointly (to such extent and in such manner
25 as the Secretary shall prescribe) with audits conducted

1 for purposes of such part, and (C) for payment of the
 2 proportion of costs of each such common audit of such
 3 an entity equal to the proportion of total program
 4 benefit payments to the entity (by all third-party
 5 payers participating in the common audit for the period
 6 being audited) which are payments under this title.''.
 7

8 (2) The amendments made by paragraph (1) shall apply
 9 to services provided, under a State plan approved under title
 10 V of the Social Security Act, on and after the first day of the
 11 first calendar quarter beginning more than 30 days after the
 12 date of enactment of this Act.

13 (d) The Secretary shall report to the Congress, not later
 14 than March 31, 1980, on actions the Secretary has taken (1)
 15 to coordinate the conduct of institutional audits and inspec-
 16 tions which are required under the programs funded under
 17 title V, XVIII, or XIX of the Social Security Act, and (2) to
 18 coordinate such audits and inspections with those conducted
 19 by other cost payers, and he shall include in such report rec-
 20 ommendations for such legislation as he deems appropriate to
 21 assure the maximum feasible coordination of such institution-
 22 al audits and inspections.

23 EFFECTIVE DATE FOR PSRO AMENDMENTS

24 SEC. 7. The amendments made by sections 1, 2, 3, and
 25 4 shall be effective 180 days after the date of enactment of
 this Act.

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effective 180 days after the date of the enactment of this Act.

1 NONPHYSICIAN MEMBERSHIP ON NATIONAL

2 PROFESSIONAL STANDARDS REVIEW COUNCIL

3 *SEC. 4. (a) Section 1163(a)(1) of the Social Security*4 *Act is amended by inserting "one doctor of dental surgery or*5 *of dental medicine, one registered professional nurse, one*6 *consumer representative, and one other health practitioner*7 *(other than a physician as defined in section 1861(r)(1)),*"8 *after "physicians,".*9 *(b) Section 1163(a)(2) of such Act is amended by strik-*10 *ing out "four members" and inserting "five members" in lieu*11 *thereof.*12 *(c) Section 1163(a)(3) of such Act is amended by in-*13 *serting "physician" after "the".*14 *(d) Section 1163(b) of such Act is amended by striking*15 *out "Members" and inserting in lieu thereof "Physician*16 *members".*17 *(e) Section 1173 of such Act is amended by striking out*18 *"(except sections 1155(c) and 1163)" and inserting in lieu*19 *thereof "(except section 1155(c))".*20 *(f) The amendments made by this section shall become*21 *effective 180 days after the date of the enactment of this Act.*

1 *ADVISORY COMMITTEE TO THE NATIONAL PROFESSIONAL*
2 *STANDARDS REVIEW COUNCIL*

3 *SEC. 5. (a) Section 1163 of the Social Security Act is*
4 *amended by adding at the end thereof the following new*
5 *subsection:*

6 *“(f)(1) The Council shall be advised and assisted in*
7 *carrying out its functions by an advisory committee (of not*
8 *less than seven nor more than fifteen members) which shall*
9 *be made up of representatives of health care practitioners*
10 *(other than physicians described in section 1861(r)(1)) for*
11 *whose services payment may be made (in whole or in part)*
12 *under any program established by or pursuant to this Act.*

13 *“(2) The Secretary shall by regulations provide the*
14 *manner in which members of such advisory committee shall*
15 *be selected and the terms of service.*

16 *“(3) The expenses reasonably and necessarily incurred,*
17 *as determined by the Secretary, by such committee in carry-*
18 *ing out its functions shall be considered to be expenses neces-*
19 *sarily incurred by the National Professional Standards*
20 *Review Council.”.*

21 *(b) The amendments made by this section shall become*
22 *effective no later than 180 days after the date of the enact-*
23 *ment of this Act.*

1 *REQUIRED ACTIVITIES OF PROFESSIONAL STANDARDS*2 *REVIEW ORGANIZATIONS*

3 *SEC. 6. (a) The second sentence of section 1154(b) of*
4 *the Social Security Act is amended by striking out “institu-*
5 *tions” and inserting in lieu thereof “hospitals”.*

6 *(b) Section 1155(a)(1) of such Act is amended by strik-*
7 *ing out “at the earliest date practicable” and inserting in lieu*
8 *thereof “to the extent and at the time specified by the*
9 *Secretary”.*

10 *(c) Section 1155(g) of such Act is amended—*

11 *(1) by striking out paragraph (2); and*

12 *(2) by striking out “(1)” in paragraph (1).*

13 *(d) Section 1155 of such Act is amended by adding at*
14 *the end thereof the following new subsection:*

15 *“(h) If the Secretary has designated an organization*
16 *(other than under section 1154) as a Professional Standards*
17 *Review Organization, but that organization has not assumed*
18 *responsibility for the review of particular activities in its*
19 *area included in subsection (a)(1), the Secretary may desig-*
20 *nate another qualified Professional Standards Review Orga-*
21 *nization (in reasonable proximity to the providers and practi-*
22 *tioners whose services are to be reviewed) to assume the re-*
23 *sponsibility for the review of some or all of those particular*
24 *activities.”.*

*DIRECT REIMBURSEMENT FOR PROFESSIONAL
STANDARDS REVIEW OF HOSPITAL SERVICES*

*SEC. 7. (a) Section 1815(b) of the Social Security Act
is repealed.*

(b) Section 1861(w) of such Act is amended—

(1) by striking out paragraph (2); and

(2) by striking out “(1)” in paragraph (1).

*(c) The amendments made by this section shall apply to
utilization review activities conducted after the date of enact-
ment of this Act.*

*CONSULTATION BY PROFESSIONAL STANDARDS REVIEW
ORGANIZATIONS WITH HEALTH CARE PRACTITIONERS*

*SEC. 8. (a) Section 1155(a) of the Social Security Act
is amended by adding at the end thereof the following new
paragraph:*

*“(8) Each Professional Standards Review Organiza-
tion shall consult (with such frequency and in such manner
as may be prescribed by the Secretary) with representatives
of health care practitioners (other than physicians described
in section 1861(r)(1)) and of institutional and noninstitu-
tional providers of health care services, in relation to the Pro-
fessional Standards Review Organization’s responsibility for
the review under paragraph (1) of the professional activities
of such practitioners and providers.”*

1 (b) Section 1162(e) of such Act is amended by striking
2 out the first parenthetical material in paragraph (1) and the
3 parenthetical material in paragraph (2).

4 (c) The amendments made by this section shall become
5 effective 180 days after the date of enactment of this Act.

6 REVIEW OF ROUTINE HOSPITAL ADMISSION SERVICES
7 AND PREOPERATIVE HOSPITAL STAYS BY PROFES-
8 SIONAL STANDARDS REVIEW ORGANIZATIONS

9 SEC. 9. Section 1155(a)(2) of the Social Security Act
10 is amended to read as follows:

11 “(2) Each Professional Standards Review Organiza-
12 tion shall have the authority to determine, in advance, in the
13 case of—

14 “(A) any elective admission to a hospital or other
15 health care facility (including admissions occurring on
16 weekends),

17 “(B) any routine diagnostic services furnished in
18 connection with such an admission, and

19 “(C) any other health care service which will con-
20 sist of extended or costly courses of treatment,

21 whether such service, if provided, or if provided by a particu-
22 lar health care practitioner or by a particular hospital or
23 other health care facility, organization, or agency, would
24 meet the criteria specified in subparagraphs (A) and (C) of
25 paragraph (1). Each such Organization may be directed by

1 *the Secretary to exercise such authority where the Secretary*
2 *finds that such determinations can be made on a timely basis*
3 *by the Organization and appropriate procedures will be ap-*
4 *plied to assure prompt notification of such determinations to*
5 *providers, physicians, practitioners, and persons on whose*
6 *behalf payment may be made under this Act for services and*
7 *items.*

8 *STUDY OF PROFESSIONAL STANDARDS REVIEW*

9 *ORGANIZATIONS NORMS, STANDARDS, AND CRITERIA*

10 *SEC. 10. The Secretary of Health, Education, and*
11 *Welfare shall, in consultation with the National Professional*
12 *Standards Review Council, conduct a nationwide study of*
13 *the differences in medical criteria and length-of-stay norms*
14 *utilized by Professional Standards Review Organizations in*
15 *the various regions of the country. The study shall include an*
16 *assessment of the rationale that contributes to these regional*
17 *differences. For those criteria and norms of care with respect*
18 *to which there is a lack of scientific or demographic evidence*
19 *or unique climate or geographic conditions that justify re-*
20 *gional differences, the Secretary shall recommend action to*
21 *eliminate those regional differences. The Secretary shall*
22 *report the findings and conclusions made with respect to the*
23 *study to the Congress within one year of the date of the en-*
24 *actment of this Act.*

5 CONSULTATIVE SERVICES FOR SKILLED NURSING

7 *SEC. 12. Section 1864(a) of the Social Security Act is*
8 *amended by striking out the third and fourth sentences.*

11 *SEC. 13. (a)(1) The Secretary of Health, Education,*
12 *and Welfare shall conduct a study of the availability and*
13 *need for skilled nursing facility services covered under part A*
14 *of title XVIII of the Social Security Act and under State*
15 *plans approved under title XIX of such Act.*

(A) an investigation of the desirability and feasibility of imposing a requirement that skilled nursing facilities (i) which furnish services to patients covered under State plans approved under title XIX of the Social Security Act also furnish such services to patients covered under part A of title XVIII of such Act, and (ii) which furnish services to patients covered under such title XVIII also to furnish such services to patients covered under such State plans,

1 (B) an evaluation of the impact of existing laws
2 and regulations on skilled nursing facilities and indi-
3 viduals covered under such State plans and under part
4 A of such title XVIII, and an evaluation of the extent
5 to which existing laws and regulations encourage
6 skilled nursing facilities to accept only title XVIII
7 beneficiaries or title XIX recipients, and

8 (C) an investigation of possible changes in regula-
9 tions and legislation which would result in encourag-
10 ing a greater availability of skilled nursing services.

11 (3) In developing such study, the Secretary shall con-
12 sult with professional organizations, health experts, private
13 insurers, nursing home providers, and consumers of skilled
14 nursing facility services.

15 (b) Within one year after the date of enactment of this
16 Act the Secretary shall complete such study and shall submit
17 to the Congress a full and complete report thereon, together
18 with recommendations with respect to the matters covered by
19 such study (including any recommendations for administra-
20 tive or legislative changes).

1 *ALTERNATIVE TO DECERTIFICATION OF SKILLED NURS-*
2 *ING FACILITIES OUT OF COMPLIANCE WITH CONDI-*
3 *TIONS OF PARTICIPATION*

4 *SEC. 14. (a) Section 1866 of the Social Security Act is*
5 *amended by adding at the end thereof the following new sub-*
6 *section:*

7 *“(f)(1) Where the Secretary determines that a skilled*
8 *nursing facility which has filed an agreement pursuant to*
9 *subsection (a)(1) no longer substantially meets the provisions*
10 *of section 1861(j), but further determines that the facility’s*
11 *deficiencies do not immediately jeopardize the health and*
12 *safety of its patients, the Secretary may, in lieu of terminat-*
13 *ing the agreement with such facility, provide that no payment*
14 *shall be made under this title (and order a State agency es-*
15 *tablished or designated pursuant to section 1902(a)(5) of this*
16 *Act to administer or supervise the administration of the State*
17 *plan under title XIX of this Act to deny payment under title*
18 *XIX) with respect to any individual admitted to such facility*
19 *after a date specified by him.*

20 *“(2) The Secretary shall not make such a decision with*
21 *respect to a facility until such facility has had a reasonable*
22 *opportunity, following the initial determination that it no*
23 *longer substantially meets the provisions of section 1861(j),*
24 *to correct its deficiencies, and, following this period, has been*
25 *given reasonable notice and opportunity for a hearing.*

1 “(3) The Secretary’s decision to deny payment may be
 2 made effective only after such notice to the public and to the
 3 facility as may be prescribed in regulations, and its effective-
 4 ness shall terminate (A) when the Secretary finds that the
 5 facility is in substantial compliance (or is making good faith
 6 efforts to achieve substantial compliance) with the provisions
 7 of section 1861(j), or (B) with the end of the eleventh month
 8 following the month such decision is made effective, which-
 9 ever occurs first. If the facility still fails to substantially
 10 meet the provisions of section 1861(j) on the date specified in
 11 clause (B) of the previous sentence, the Secretary shall termi-
 12 nate such facility’s agreement, notwithstanding the provi-
 13 sions of paragraph (2) of subsection (b), effective with the
 14 first day of the first month following the month specified in
 15 such clause.”.

16 (b) Section 1903 of such Act is amended by adding the
 17 following new paragraph (4) to the new subsection (r) added
 18 by section 16(c) of this Act:

19 “(4) Any order for denial of payment to a skilled nurs-
 20 ing facility under section 1866(f) of the Act shall become
 21 effective on the date so specified by the Secretary.”.

22 LIFE SAFETY CODE REQUIREMENTS

23 SEC. 15. Section 1861(j)(13) is amended by striking
 24 out all that precedes the first semicolon and inserting in lieu
 25 thereof “meets such provisions of such edition (as is specified

1 *by the Secretary in regulations) of the Life Safety Code of*
2 *the National Fire Protection Association as are applicable to*
3 *nursing homes”.*

4 *CIVIL MONETARY PENALTIES FOR MEDICARE AND*
5 *MEDICAID FRAUD*

6 *SEC. 16. (a) Section 1107 of the Social Security Act is*
7 *amended by adding at the end thereof the following new sub-*
8 *section:*

9 *“(c)(1) Any person (including an organization, agency,*
10 *or other entity) who presents or causes to be presented to an*
11 *officer, employee, or agent of the United States, or of any*
12 *department or agency thereof, or of any State agency, a*
13 *claim (as defined in paragraph (11)(B)) that the Secretary*
14 *determines is for a medical or other item or service—*

15 *“(A) that such person knows or has reason to*
16 *know was not provided as claimed, or*

17 *“(B) that was provided in violation of Federal or*
18 *State law or regulation, or*

19 *“(C) that was provided in violation of an agree-*
20 *ment between such person and the United States or a*
21 *State agency,*

22 *shall be subject, in addition to any other penalties that may*
23 *be prescribed by law, to a civil penalty of not more than*
24 *\$2,000 for each such item or service. In addition, such a*
25 *person shall be subject to an assessment of not more than*

1 *twice the amount claimed for each such item or service in*
2 *lieu of damages sustained by the United States or a State*
3 *agency because of such claim.*

4 “(2) *The Secretary shall not make a determination ad-*
5 *verse to any person under paragraph (1) until such person*
6 *has been given written notice and an opportunity for a hear-*
7 *ing on the record at which he is entitled to be represented by*
8 *counsel, to present witnesses, and to cross-examine witnesses*
9 *against him.*

10 “(3) *In determining the amount of any penalty assessed*
11 *pursuant to paragraph (1) of this subsection, the Secretary*
12 *shall take into account (A) the nature of the claims and the*
13 *circumstances under which they were presented, (B) the*
14 *degree of culpability, history of prior offenses, and financial*
15 *condition of the person presenting the claims, and (C) such*
16 *other matters as justice may require.*

17 “(4)(A) *Except as provided in subparagraph (B), any*
18 *person adversely affected by a determination of the Secretary*
19 *under this subsection may obtain a review of such determina-*
20 *tion in the United States Court of Appeals for the circuit in*
21 *which the person resides, or in which the claim was present-*
22 *ed, by filing in such court within sixty days following notifi-*
23 *cation to the person of the Secretary's final determination a*
24 *written petition praying that the determination be modified*
25 *or set aside. A copy of the petition shall be forthwith trans-*

1 mitted by the clerk of the court to the Secretary, and there-
2 upon the Secretary shall file in the court the record in the
3 proceeding as provided in section 2112 of title 28, United
4 States Code. Upon such filing, the court shall have jurisdic-
5 tion of the proceeding and of the question determined therein,
6 and shall have the power to make and enter upon the plead-
7 ings, testimony, and proceedings set forth in such record a
8 decree affirming, modifying, remanding for further consider-
9 ation, or setting aside, in whole or in part, the determination
10 of the Secretary and enforcing the same to the extent that
11 such order is affirmed or modified. No objection that has not
12 been urged before the Secretary shall be considered by the
13 court, unless the failure or neglect to urge such objection shall
14 be excused because of extraordinary circumstances. The find-
15 ings of the Secretary with respect to questions of fact, if sup-
16 ported by substantial evidence on the record considered as a
17 whole, shall be conclusive. If any party shall apply to the
18 court for leave to adduce additional evidence and shall show
19 to the satisfaction of the court that such additional evidence is
20 material and that there were reasonable grounds for the fail-
21 ure to adduce such evidence in the hearing before the Secre-
22 tary, the court may order such additional evidence to be
23 taken before the Secretary and to be made a part of the
24 record. The Secretary may modify his findings as to the
25 facts, or make new findings, by reason of additional evidence

1 so taken and filed, and he shall file such modified or new
2 findings, which findings with respect to questions of fact, if
3 supported by substantial evidence on the record considered as
4 a whole, shall be conclusive, and his recommendations, if
5 any, for the modification or setting aside of his original
6 order. Upon the filing of the record with it, the jurisdiction of
7 the court shall be exclusive and its judgment and decree shall
8 be final, except that the same shall be subject to review by the
9 Supreme Court of the United States, as provided in section
10 1254 of title 28, United States Code.

11 “(B) In any case in which the penalties and assess-
12 ments imposed by the Secretary under this subsection to any
13 person exceed \$15,000 with respect to—

14 “(i) services or items furnished during a two-year
15 period, or

16 “(ii) in the case of providers, reimbursement on a
17 cost or cost-related basis for cost reports filed for any
18 two consecutive cost reporting periods,

19 such person may obtain a review of such penalties and as-
20 sessments in the appropriate United States district court by
21 filing in such court, within sixty days following notification
22 to the person of the Secretary’s final determination with re-
23 spect to the most recent imposition of such penalty or assess-
24 ment, a written petition praying that such penalties and as-
25 sessments be modified or set aside. Such court shall make a

1 *de novo* determination with respect to all of the facts and
2 conclusions of law under consideration.

3 “(5) Civil penalties and assessments imposed under this
4 subsection may be compromised by the Secretary and may be
5 recovered in a civil action in the name of the United States
6 brought in United States district court for the district where
7 the claim was presented, or where the claimant resides, as
8 determined by the Secretary. Amounts recovered shall be
9 paid to the Secretary, and disposed of as follows: (A) a por-
10 tion of amounts recovered arising out of a claim under title
11 XIX shall be paid to the State agency, as provided under
12 paragraph (7); (B) such portion of amounts recovered as is
13 determined to have been paid out of the trust funds under
14 sections 1817 and 1841 shall be repaid to such trust funds;
15 and (C) the remainder shall be deposited as miscellaneous
16 receipts of the Treasury of the United States. The amount of
17 such penalty, when finally determined, or the amount agreed
18 upon in compromise, may be deducted from any sum then or
19 later owing by the United States or a State agency to the
20 person against whom the penalty has been assessed.

21 “(6) A determination by the Secretary to assess a
22 penalty under paragraph (1) of this subsection shall be final
23 upon the expiration of the sixty day period referred to in
24 paragraph (4) unless the person against whom the penalty
25 has been assessed files an appeal as provided in that para-

1 *graph. Matters that were raised or that could have been*
2 *raised in a hearing before the Secretary or in an appeal pur-*
3 *suant to paragraph (4) may not be raised as a defense to a*
4 *civil action by the United States to collect a penalty or dam-*
5 *ages assessed under this subsection.*

6 “(7) *In the case of such a penalty or damages recovered*
7 *by the United States arising out of a claim filed under title*
8 *XIX of this Act, the State agency shall be reimbursed an*
9 *amount bearing the same ratio to the sum recovered as the*
10 *amount paid by the State agency for such claim bears to the*
11 *total payment for such claim.*

12 “(8)(A) *The Secretary may enter into an agreement*
13 *with any person against whom a penalty has been assessed*
14 *under this subsection whereby such person will consent not to*
15 *claim payment under title XVIII or a State plan under title*
16 *XIX for any item or service provided for a period of time not*
17 *to exceed two years.*

18 “(B) *The Secretary may refuse to make any further*
19 *payment under title XVIII of this Act, or order a State*
20 *agency to deny any further payment under title XIX of this*
21 *Act, to any person with respect to whom a final determina-*
22 *tion has been made to assess a penalty under this subsection,*
23 *for any item or service rendered during a period of not more*
24 *than two years from the date upon which such determination*
25 *became final. If the Secretary intends to exercise the authori-*

1 *ty in this subparagraph, he shall give written notice thereof to*
 2 *such person and to the single State agency (referred to in*
 3 *section 1902(a)(5)) of each State which he has reason to be-*
 4 *lieve does or may use the services of such person in providing*
 5 *medical assistance under title XIX of the Act, and shall give*
 6 *to such person an opportunity for a hearing on the record at*
 7 *which he is entitled to be represented by counsel, to present*
 8 *witnesses, and to cross-examine witnesses against him.*

9 “(9) *Whenever a final determination to impose a pen-*
 10 *alty is made by the Secretary under this subsection, he shall*
 11 *notify the appropriate State or local medical agency or orga-*
 12 *nization, an appropriate Professional Standards Review Or-*
 13 *ganization, and the cognizant State or local licensing agency*
 14 *or organization (including the agency specified in section*
 15 *1864(a) and 1902(a)(33)) that such a penalty has been im-*
 16 *posed and the reasons therefor.*

17 “(10) *The Secretary shall initiate a proceeding under*
 18 *this subsection only as authorized by the Attorney General*
 19 *pursuant to procedures agreed upon by them.*

20 “(11) *For the purposes of this subsection—*

21 “(A) *the term ‘State agency’ means the agency es-*
 22 *tablished or designated pursuant to section 1902(a)(5)*
 23 *of this Act to administer or supervise the administra-*
 24 *tion of the State plan under title XIX of this Act;*

1 “(B) the term ‘claim’ means a claim submitted by
2 (i) a provider of services or other person, agency, or or-
3 ganization that furnishes services under title XVIII of
4 this Act, or (ii) a person, agency, or organization that
5 provides medical assistance under title XIX of this Act
6 against the United States or a State agency for pay-
7 ment for health care services under title XVIII or
8 XIX of this Act;

9 “(C) the term ‘item or service’ means (i) a partic-
10 ular item, device, medical supply, or service claimed to
11 have been provided to a patient and listed in an item-
12 ized claim for payment, or (ii) in the case of a claim
13 based on annual costs, any entry in the annual cost
14 report, books of account or other document supporting
15 such claim.

16 “(D) the term ‘agency of the United States’ in-
17 cludes any contractor acting as a fiscal intermediary,
18 carrier, or fiscal agent or any other claims processing
19 agent for a health insurance or medical services pro-
20 gram under title XVIII or XIX of this Act.”.

21 (b) The section heading of section 1107 of such Act is
22 amended to read as follows: “PENALTIES”.

23 (c) Section 1903 of such Act is amended by adding at
24 the end thereof the following new subsection:

1 “(r)(1) Notwithstanding the preceding provisions of this
2 section, no payment shall be made to a State (except as pro-
3 vided under this subsection) with respect to expenditures in-
4 curred by it for services provided by any person during any
5 period that an order for denial of payment (as authorized by
6 section 1107(c)(8)(B)) is effective with respect to such
7 person.

8 “(2) Any order for denial of payment issued with re-
9 spect to any person under section 1107(c)(8)(B) of this Act
10 shall become effective, in the case of any State plan approved
11 under this title, on the sixth day after the date on which the
12 Secretary gives notice of such order to the State agency ad-
13 ministering or supervising the administration of the plan.
14 Any such order shall cease to be effective not later than two
15 years from the date upon which the determination to assess a
16 penalty under section 1107 of this Act became final. Upon
17 the determination of the Secretary that any such order shall
18 cease to be effective, he shall forthwith notify each State
19 agency to which he has theretofore submitted notice under
20 section 1107(c)(8)(B) with respect to such person.

21 “(3) Whenever any order which has been issued by the
22 Secretary under section 1107(c)(8)(B) ceases to be effective,
23 any payment to which any State would (except for the pre-
24 ceding provisions of this subsection) have been entitled under
25 this section on account of services provided by such person

1 *shall be made to such State for the month in which such*
 2 *order ceases to be effective.”.*

3 *EXCLUSION OF HEALTH CARE PROFESSIONALS CONVICTED*
 4 *OF MEDICARE- OR MEDICAID-RELATED CRIMES*

5 *SEC. 17. (a) Title XI of the Social Security Act is*
 6 *amended by adding after section 1126 the following new*
 7 *section:*

8 *“EXCLUSION OF CERTAIN INDIVIDUALS CONVICTED OF*
 9 *MEDICARE- OR MEDICAID-RELATED CRIMES*

10 *“SEC. 1127. (a) Whenever the Secretary determines*
 11 *that a physician or other individual has been convicted (on or*
 12 *after October 25, 1977, or within such period prior to that*
 13 *date as the Secretary shall specify in regulations) of a crimi-*
 14 *nal offense related to such individual’s participation in the*
 15 *delivery of medical care or services under title XVIII or title*
 16 *XIX, the Secretary—*

17 *“(1) shall bar from participation in the program*
 18 *under title XVIII, for such period as he may deem ap-*
 19 *propriate, each such individual otherwise eligible to*
 20 *participate in such program;*

21 *“(2)(A) shall promptly notify each appropriate*
 22 *State agency administering or supervising the admin-*
 23 *istration of a State plan approved under title XIX, of*
 24 *the fact and circumstances of such determination, and*
 25 *(except as provided in subparagraph (B)) require each*

1 *such agency to bar such individual from participation*
2 *in such program for such period as he shall specify,*
3 *which in the case of an individual specified in para-*
4 *graph (1) shall be the period established pursuant to*
5 *paragraph (1);*

6 *“(B) may waive the requirement under subpara-*
7 *graph (A) to bar an individual from participation in a*
8 *State plan program under title XIX, where he receives*
9 *and approves a request for such a waiver with respect*
10 *to that individual from the State agency administering*
11 *or supervising the administration of such plan; and*

12 *“(3) shall promptly notify the appropriate State*
13 *or local agency or authority having responsibility for*
14 *the licensing or certification of such individual of the*
15 *fact and circumstances of such determination, request*
16 *that appropriate investigations be made and sanctions*
17 *invoked in accordance with applicable State law and*
18 *policy, and request that such State or local agency or*
19 *authority keep the Secretary and the Inspector Gener-*
20 *al fully and currently informed with respect to any ac-*
21 *tions taken in response to such request.*

22 *“(b) A determination made by the Secretary under this*
23 *section shall be effective at such time and upon such reason-*
24 *able notice to the public and to the person furnishing the*
25 *services involved as may be specified in regulations. Such*

1 *determination shall be effective with respect to services fur-*
2 *nished to an individual on or after the effective date of such*
3 *determination (except that in the case of inpatient hospital*
4 *services, post-hospital extended care services, and home*
5 *health services furnished under title XVIII, such determina-*
6 *tion shall be effective in the manner provided in paragraphs*
7 *(3) and (4) of section 1866(b) with respect to terminations of*
8 *agreements), and shall remain in effect until the Secretary*
9 *finds and gives reasonable notice to the public that the basis*
10 *for such determination has been removed and that there is*
11 *reasonable assurance that it will not recur.*

12 “(c) Any person who is the subject of an adverse deter-
13 *mination made by the Secretary under subsection (a) shall*
14 *be entitled to reasonable notice and opportunity for a hearing*
15 *thereon by the Secretary to the same extent as is provided in*
16 *section 205(b), and to judicial review of the Secretary’s final*
17 *decision after such hearing as is provided in section 205(g).”*

18 (b) Section 1862(e) of such Act is amended to read as
19 *follows:*

20 “(e) No payment may be made under this title with
21 *respect to any item or service furnished by a physician or*
22 *other individual during the period when he is barred pursu-*
23 *ant to section 1127 from participation in the program under*
24 *this title.”*

1 (c) Section 1902(a)(39) of such Act is amended to read
2 as follows:

3 “(39) provide that the State agency shall bar any
4 specified individual from participation in the program
5 under the State plan for the period specified by the
6 Secretary, when required by him to do so pursuant to
7 section 1127, and provide that no payment may be
8 made under the plan with respect to any item or serv-
9 ice furnished by such individual during such period;
10 and”.

11 (d) Section 1902(g) of such Act is repealed.

12 REQUIREMENTS CONCERNING REPORTING OF FINANCIAL
13 INTEREST

14 SEC. 18. (a) Section 1124(a)(3)(A)(ii) of the Social
15 Security Act is amended to read as follows:

16 “(ii) is the owner of a whole or part interest in
17 any mortgage, deed of trust, note, or other obligation
18 secured (in whole or in part) by the entity or any of
19 the property or assets thereof, which whole or part in-
20 terest is equal to \$25,000 or 5 per centum of the total
21 property and assets of the entity; or”.

22 (b) Section 1902(a)(35) of such Act is amended to read
23 as follows:

1 “(35) provide that any entity (as defined in sec-
 2 tion 1124(a)(2)) receiving payments under such plan
 3 complies with the requirements of section 1124;”.

4 WITHHOLDING OF FEDERAL SHARE OF PAYMENTS TO
 5 MEDICAID PROVIDERS TO RECOVER MEDICARE
 6 OVERPAYMENTS

7 SEC. 19. (a) Subparagraphs (D) and (E) of section
 8 1902(a)(13) of the Social Security Act are amended by in-
 9 serting “(except where the State agency is subject to an order
 10 under section 1913)” immediately after “payment” each
 11 time it appears.

12 (b) Section 1903(a)(1) of such Act is amended by strik-
 13 ing out “(g) and (h)” immediately after “subject to subsec-
 14 tions” and inserting in lieu thereof “(g), (h), and (j)”.

15 (c) Section 1903(j) of such Act is amended to read as
 16 follows:

17 “(j) Notwithstanding the preceding provisions of this
 18 section, the amount determined under subsection (a)(1) for
 19 any State for any quarter shall be adjusted in accordance
 20 with section 1913.”.

21 (d) Title XIX of such Act is amended by adding at the
 22 end the following new section:

1 “WITHHOLDING OF FEDERAL SHARE OF PAYMENTS FOR
2 CERTAIN MEDICARE PROVIDERS

3 “SEC. 1913. (a) *The Secretary may adjust, in accord-*
4 *ance with this section, the Federal matching payment to a*
5 *State with respect to expenditures for medical assistance fur-*
6 *nished in any quarter by—*

7 “(1) *an institution (A) which has or previously*
8 *had in effect an agreement with the Secretary under*
9 *section 1866; and (B)(i) from which the Secretary has*
10 *been unable to recover overpayments made under title*
11 *XVIII, or (ii) from which the Secretary has been*
12 *unable to collect the information necessary to enable*
13 *him to determine the amount (if any) of the overpay-*
14 *ments made to such institution under title XVIII; and*

15 “(2) *any person (A) who (i) has previously ac-*
16 *cepted payment on the basis of assignment under sec-*
17 *tion 1842(b)(3)(B)(ii), and (ii) during the annual*
18 *period immediately preceding such quarter submitted*
19 *no claims for payment under title XVIII, or submitted*
20 *claims for payment under title XVIII which aggregat-*
21 *ed less than the amount of overpayments made to him,*
22 *and (B)(i) from whom the Secretary has been unable*
23 *to recover overpayments received in violation of section*
24 *1842(b)(3)(B)(ii), or (ii) from whom the Secretary has*
25 *been unable to collect the information necessary to*

1 enable him to determine the amount (if any) of the
2 overpayments made to such person under title XVIII.

3 “(b) The Secretary may (subject to the remaining provi-
4 sions of this section) reduce payment to a State under this
5 title for any quarter by an amount equal to the lesser of the
6 Federal matching share of payments to any provider speci-
7 fied in subsection (a), or the total overpayments to such pro-
8 vider under title XVIII, and may require the State to reduce
9 its payment to such provider by such amount.

10 “(c) The Secretary shall not make any adjustment in
11 the payment to a State, nor require any adjustment in the
12 payment to a provider of services, pursuant to subsection (b)
13 until after he has provided adequate notice (which shall be
14 not less than 60 days) to the State agency and the provider of
15 services.

16 “(d) The Secretary shall by regulation provide proce-
17 dures for implementation of this section, which procedures
18 shall (1) determine the amount of the Federal payment to
19 which the provider would otherwise be entitled under this sec-
20 tion which shall be treated as a setoff against overpayments
21 under title XVIII, and (2) assure the restoration to the pro-
22 vider of amounts withheld under this section which are ulti-
23 mately determined to be in excess of overpayments under title
24 XVIII and to which the provider would otherwise be entitled
25 under this title.

1 “(e) The Secretary shall restore to the trust funds estab-
 2 lished under sections 1817 and 1841, as appropriate,
 3 amounts recovered under this section as setoffs against over-
 4 payments under title XVIII.

5 “(f) Notwithstanding any other provision of this title, a
 6 provider shall not be entitled to recover from any State any
 7 amount in payment for medical care and services under this
 8 title which is withheld by the State agency pursuant to an
 9 order by the Secretary under subsection (b).”.

10 HOSPITAL PROVIDERS OF LONG-TERM CARE SERVICES

11 (“SWING-BEDS”)

12 SEC. 20. (a)(1) Title XVIII of the Social Security Act
 13 is amended by adding the following new section at the end
 14 thereof:

15 “HOSPITAL PROVIDERS OF EXTENDED CARE SERVICES

16 “SEC. 1882. (a)(1) Any hospital (other than a hospital
 17 which has in effect a waiver of the requirement imposed by
 18 section 1861(e)(5)) which has an agreement under section
 19 1866 may (subject to subsection (b)) enter into an agreement
 20 with the Secretary under which its inpatient hospital facili-
 21 ties may be used for the furnishing of services of the type
 22 which, if furnished by a skilled nursing facility, would con-
 23 stitute post-hospital extended care services.

24 “(2)(A) Notwithstanding any other provision of this
 25 title, payment to any hospital for services furnished under an

1 agreement entered into under this section shall be based upon
2 the reasonable cost of the services as determined under sub-
3 paragraph (B).

4 “(B)(i) The reasonable cost of the services consists of
5 the reasonable cost of routine services (determined under
6 clause (ii)) and the reasonable cost of ancillary services (de-
7 termined under clause (iii)).

8 “(ii) The reasonable cost of routine services furnished
9 during any calendar year by a hospital under an agreement
10 under this section is equal to the product of (I) the number of
11 patient days during the year for which the services were fur-
12 nished, and (II) the average reasonable cost per patient-day,
13 such average reasonable cost per patient-day being the aver-
14 age rate per patient-day paid for routine services during the
15 previous calendar year under title XIX to skilled nursing
16 facilities located in the State in which the hospital is located
17 and which have agreements entered into under section
18 1902(a)(28).

19 “(iii) The reasonable cost of ancillary services shall be
20 determined in the same manner as the reasonable cost of an-
21 cillary services provided for inpatient hospital services.

22 “(b) The Secretary may not enter into an agreement
23 under this section with any hospital unless the hospital has
24 been granted a certificate of need for the provision of long-
25 term care services from the State health planning and devel-

1 opment agency (designated under section 1521 of the Public
2 Health Service Act) for the State in which the hospital is
3 located.

4 “(c) An agreement with a hospital under this section
5 shall, except as otherwise provided under regulations of the
6 Secretary, be subject to termination on the same conditions
7 as are agreements with skilled nursing facilities under sec-
8 tion 1866 (unless the hospital fails to satisfy the require-
9 ments specified in subsection (b)) and shall, where not incon-
10 sistent with any provision of this section, impose the same
11 duties, responsibilities, conditions, and limitations, as those
12 imposed under such agreements entered into under section
13 1866; except that no such agreement with any hospital shall
14 be in effect for any period during which the hospital does not
15 have in effect an agreement under section 1866, or where
16 there is in effect for the hospital a waiver of the requirement
17 imposed by section 1861(e)(5). A hospital whose agreement
18 under this section has been terminated shall not be eligible to
19 undertake a new agreement until a two-year period has
20 elapsed from the termination date.

21 “(d) Any agreement with a hospital under this section
22 shall provide that payment for services will be made only for
23 services for which payment would be made as post-hospital
24 extended care services if those services had been furnished by
25 a skilled nursing facility under an agreement entered into

1 under section 1866; and any individual who is furnished
2 services, for which payment may be made under an agree-
3 ment under this section, shall, for purposes of this title (other
4 than this section), be deemed to have received post-hospital
5 extended care services in like manner and to the same extent
6 as if the services furnished to him had been post-hospital ex-
7 tended care services furnished by a skilled nursing facility
8 under an agreement under section 1866.

9 “(e) During a period for which a hospital has in effect
10 an agreement under this section, in order to allocate routine
11 costs between hospital and long-term care services for pur-
12 poses of determining payment for inpatient hospital services,
13 the total reimbursement received for routine services from all
14 classes of long-term care patients (including title XVIII, title
15 XIX, and private pay patients) shall be subtracted from the
16 hospital’s total routine costs before calculations are made to
17 determine title XVIII reimbursement for routine hospital
18 services.

19 “(f) A hospital which enters into an agreement with the
20 Secretary under this section shall be required to meet those
21 conditions applicable to skilled nursing facilities relating to
22 discharge planning and the social services function (and
23 staffing requirements to satisfy it) which are promulgated by
24 the Secretary under section 1861(j)(15). Services furnished
25 by such a hospital which would otherwise constitute post-hos-

1 *pital extended care services if furnished by a skilled nursing*
2 *facility shall be subject to the same requirements applicable*
3 *to such services when furnished by a skilled nursing facility*
4 *except for those requirements the Secretary determines are*
5 *inappropriate in the case of these service being furnished by*
6 *a hospital under this section.*

7 *“(g) The Secretary shall prescribe by regulation an al-*
8 *ternative method for determining the amount of the reason-*
9 *able cost of post-hospital extended care services furnished in*
10 *a distinct part of a hospital certified as a skilled nursing*
11 *facility under section 1861(j) that is the same method as the*
12 *method prescribed in subsections (a) and (e) for determining*
13 *the amount of the reasonable cost for such services furnished*
14 *by a hospital that uses beds interchangeably for either acute*
15 *or long-term care and shall approve the use of this method*
16 *when a hospital can demonstrate that its use would contrib-*
17 *ute significantly to the more efficient or effective administra-*
18 *tion of this part and would be in the interest of program*
19 *beneficiaries.”.*

20 *(2) Section 1861(v)(1) is amended by adding at the end*
21 *thereof the following new subparagraph:*

22 *“(G) Where a hospital furnishes inpatient services that*
23 *would otherwise constitute post-hospital extended care serv-*
24 *ices if furnished by a skilled nursing facility on the basis of*
25 *a determination made by a Professional Standards Review*

1 *Organization (or, in the absence of such a qualified organiza-*
2 *tion, by such organization or agency with review responsibil-*
3 *ity as is otherwise provided for under this title) that (i) post-*
4 *hospital extended care services are medically necessary; and*
5 *(ii) that such services are not otherwise available (as deter-*
6 *mined in accordance with criteria established by the Secre-*
7 *tary) at the time the determination is made that post-hospital*
8 *extended care services rather than inpatient hospital services*
9 *are medically necessary (and for such period as the circum-*
10 *stances described in clauses (i) and (ii) continue to apply);*
11 *and where the Secretary finds that (I) such hospital has had,*
12 *during the immediately preceding calendar year, an average*
13 *daily occupancy rate of less than 80 percent; and (IV) could*
14 *be granted a certificate of need for the provision of long-term*
15 *services from the designated State health planning and devel-*
16 *opment agency for the State in which the hospital is located,*
17 *the reasonable cost of such services for such hospital shall be*
18 *computed as provided for in section 1882(a). Where payment*
19 *is made in accordance with the preceding sentence, the indi-*
20 *vidual who is furnished such services will be deemed to have*
21 *received post-hospital extended care services in like manner*
22 *and to the same extent as if the services furnished to him had*
23 *been post-hospital extended care services furnished by a*
24 *skilled nursing facility under an agreement under section*
25 *1866."*

1 (3) *Within three years after the date of the enactment of*
 2 *this Act, the Secretary shall submit to the Congress a report*
 3 *evaluating the program established by the amendment made*
 4 *by paragraph (1) of this subsection and shall include in such*
 5 *report an analysis of—*

6 (A) *the extent and effect of the agreements under*
 7 *the program on availability and effective and economi-*
 8 *cal provision of long-term care services, and*

9 (B) *whether the program should be continued.*

10 (b) *Title XIX of the Social Security Act is amended by*
 11 *adding after section 1912 the following new section:*

12 “*HOSPITAL PROVIDERS OF SKILLED NURSING AND*
 13 *INTERMEDIATE CARE SERVICES*

14 “*SEC. 1914. (a) Notwithstanding any other provision*
 15 *of this title, payment may be made, in accordance with this*
 16 *section, under a State plan approved under this title for*
 17 *skilled nursing facility services and intermediate care facili-*
 18 *ty services furnished by a hospital which has in effect an*
 19 *agreement under section 1882.*

20 “(b)(1) *Payment to any such hospital, for any skilled*
 21 *nursing or intermediate care facility services furnished, shall*
 22 *be at a rate equal to the average rate per patient-day paid for*
 23 *routine services during the previous calendar year under this*
 24 *title to skilled nursing and intermediate care facilities located*
 25 *in the State in which the hospital is located. The reasonable*

1 cost of ancillary services shall be determined in the same
2 manner as the reasonable cost of ancillary services provided
3 for inpatient hospital services.

4 “(2) With respect to any period for which a hospital has
5 an agreement under section 1882, in order to allocate routine
6 costs between hospital and long-term care services, the total
7 reimbursement for routine services received from all classes
8 of long-term care patients (including title XVIII, title XIX,
9 and private pay patients) shall be subtracted from the hospi-
10 tal total routine costs before calculations are made to deter-
11 mine title XIX reimbursement for routine hospital services.

12 “(c) The State plan may provide an alternative method
13 for determining the amount of payment for long-term care
14 services furnished in a distinct part of a hospital (where the
15 conditions described in section 1882(g) are met) that is the
16 same as the method prescribed in subsection (b) of this sec-
17 tion for determining the amount of payment for such services
18 furnished by a hospital that uses beds interchangeably for
19 either acute or long-term care.”.

20 (c) The amendments made by this section become effec-
21 tive on the date on which final regulations, promulgated by
22 the Secretary to implement the amendments, are first issued;
23 and those regulations shall be issued not later than the first
24 day of the sixth calendar month following the month in which
25 this Act is enacted.

6 “COORDINATED AUDITS

7 “SEC. 1128. If an entity provides services reimbursable
8 on a cost-related basis under title V or XIX, as well as serv-
9 ices reimbursable on such a basis under title XVIII, the Sec-
10 retary shall require, as a condition for payment to any State
11 under title V or XIX with respect to administrative costs
12 incurred in the performance of audits of the books, accounts,
13 and records of that entity, that these audits be coordinated
14 through common audit procedures with audits performed with
15 respect to the entity for purposes of title XVIII. The Secre-
16 tary shall specify by regulation such methods as he finds
17 feasible and equitable for the apportionment of the cost of
18 coordinated audits between the program established under
19 title V or XIX and the program established under title
20 XVIII. Where the Secretary finds that a State has declined
21 to participate in such a common audit with respect to title V
22 or XIX, he shall reduce the payments otherwise due such
23 State under such title by an amount which he estimates to be
24 in excess of the amount that would have been apportioned to
25 the State under the title (for the expenses of the State in-

1 curred in the common audit) if it had participated in the
2 common audit.”.

3 (b)(1) Section 1902(a) of the Social Security Act is
4 amended—

5 (A) by striking out “and” at the end of paragraph
6 (39);

7 (B) by striking out the period at the end of para-
8 graph (40) and inserting in lieu thereof “; and”; and

9 (C) by inserting after paragraph (40) the follow-
10 ing new paragraph:

11 “(41) provide (A) that the records of any entity
12 participating in the plan and providing services reim-
13 bursable on a cost-related basis will be audited as the
14 Secretary determines to be necessary to insure that
15 proper payments are made under the plan, (B) that
16 such audits, for such entities also providing services
17 under part A of title XVIII, will be coordinated and
18 conducted jointly (to such extent and in such manner
19 as the Secretary shall prescribe) with audits conducted
20 for purposes of such part, and (C) for payment of the
21 proportion of costs of each such common audit of such
22 an entity equal to the proportion of total program bene-
23 fit payments to the entity (by all third-party payers
24 participating in the common audit for the period being
25 audited) which are payments under this title.”.

1 (2) *The amendments made by paragraph (1) shall apply*
2 *to medical assistance provided, under a State plan approved*
3 *under title XIX of the Social Security Act, on and after the*
4 *first day of the first calendar quarter beginning more than 30*
5 *days after the date of enactment of this Act.*

6 (c)(1) *Section 505(a) of the Social Security Act is*
7 *amended—*

8 (A) *by striking out “and” at the end of paragraph*
9 *(14);*

10 (B) *by striking out the period at the end of para-*
11 *graph (15) and inserting in lieu thereof “; and”; and*

12 (C) *by inserting after paragraph (15) the follow-*
13 *ing new paragraph:*

14 “(16) *provides (A) that the records of any entity*
15 *participating in the plan and providing services reim-*
16 *bursable on a cost-related basis will be audited as the*
17 *Secretary determines to be necessary to insure that*
18 *proper payments are made under the plan, (B) that*
19 *under part A of title XVIII, will be coordinated and*
20 *conducted jointly (to such extent and in such manner*
21 *as the Secretary shall prescribe) with audits conducted*
22 *for purposes of such part, and (C) for payment of the*
23 *proportion of costs of each such common audit of such*
24 *an entity equal to the proportion of total program bene-*
25 *fit payments to the entity (by all third-party payers*

1 *participating in the common audit for the period being*
 2 *audited) which are payments under this title.”.*

3 *(2) The amendments made by paragraph (1) shall apply*
 4 *to services provided, under a State plan approved under title*
 5 *V of the Social Security Act, on and after the first day of the*
 6 *first calendar quarter beginning more than 30 days after the*
 7 *date of enactment of this Act.*

8 *(d) The Secretary shall report to the Congress, not later*
 9 *than July 1, 1980, on actions the Secretary has taken (1) to*
 10 *coordinate the conduct of institutional audits and inspections*
 11 *which are required under the programs funded under title V,*
 12 *XVIII, or XIX of the Social Security Act, and (2) to co-*
 13 *ordinate such audits and inspections with those conducted by*
 14 *other cost payers, and he shall include in such report recom-*
 15 *mendations for such legislation as he deems appropriate to*
 16 *assure the maximum feasible coordination of such institu-*
 17 *tional audits and inspections.*

18 *VOLUNTARY CERTIFICATION OF PRIVATE*

19 *SUPPLEMENTARY POLICIES (“MEDIGAP”)*

20 *SEC. 22. Title XI of the Social Security Act is amend-*
 21 *ed by adding at the end thereof the following new section:*

22 *“VOLUNTARY CERTIFICATION OF SUPPLEMENTARY*

23 *HEALTH INSURANCE POLICIES*

24 *“SEC. 1174. (a) The Secretary shall, no later than*
 25 *January 1, 1981, establish a procedure whereby health in-*

1 *surance policies offered by private insurers in supplementa-*
2 *tion of benefits provided under title XVIII of this Act may be*
3 *certified by the Secretary as meeting minimum standards*
4 *with respect to adequacy of coverage, reasonableness of pre-*
5 *mium charge, and disclosure of information to the insured.*
6 *Such procedure shall provide an opportunity for any insurer*
7 *to submit any such policy to the Secretary for his examina-*
8 *tion and for his certification thereof as meeting the standards*
9 *set forth in subsection (b). Such certification shall remain in*
10 *effect, if the insurer files a notarized statement with the Sec-*
11 *retary no later than December 31 of each year stating the*
12 *policy continues to meet the standards set forth in subsection*
13 *(b), and if the insurer submits such additional data as the*
14 *Secretary finds necessary to independently verify the accura-*
15 *cy of such notarized statement. Where the Secretary deter-*
16 *mines such a policy meets (or continues to meet) the required*
17 *standards, he shall authorize the insurer to have printed on*
18 *such policy an emblem which the Secretary shall cause to be*
19 *designed for use as an indication that a policy has received*
20 *the Secretary's certification. The Secretary shall provide*
21 *each State insurance commissioner with a list of all the poli-*
22 *cies which have received his certification.*

23 “(b) The Secretary shall not certify under this section
24 any policy unless he finds that such policy—

1 “(1) supplements both part A and part B of title
2 XVIII;

3 “(2) is written in simplified language which can
4 be understood by purchasers;

5 “(3) does not limit or preclude liability under the
6 policy for a period longer than six months because of a
7 health condition existing before the policy is effective;

8 “(4) contains a prominently displayed “no loss
9 cancellation clause” enabling the insured to return the
10 policy within 30 days of the date of sale without finan-
11 cial loss;

12 “(5) can be expected (as estimated in accordance
13 with accepted actuarial principles and practices) to
14 return to policyholders in the form of benefits provided
15 under the policy such percentage of the amount of pre-
16 miums collected as the Secretary finds reasonable
17 (taking into account all relevant underwriting and
18 other considerations relating to the design and market-
19 ing of such policies), except that such percentage may
20 not be less than 75 percent with respect to group poli-
21 cies and 60 percent with respect to individual policies;
22 and

23 “(6) contains a written statement for prospective
24 purchasers of such information as the Secretary shall
25 prescribe relating to (A) the policy’s premium, cover-

1 *age, renewability and coinsurance provisions and (B)*
2 *the identification of the insurer and its agents.*

3 *“(c) Any supplementary health insurance policy (as de-*
4 *fin ed in subsection (a)) issued in any State which has estab-*
5 *lished under State law a regulatory program providing for*
6 *the application of minimum standards with respect to such*
7 *policies equal to or more stringent than the standards pro-*
8 *vided for under subsection (b) shall be deemed (for so long as*
9 *the Secretary finds such State program continues to require*
10 *compliance with such standards) to meet the standards set*
11 *forth in subsection (b).*

12 *“(d)(1) Whoever knowingly or willfully makes or*
13 *causes to be made or induces or seeks to induce the making of*
14 *any false statement or representation of a material fact with*
15 *respect to the compliance of any policy with the standards set*
16 *forth in subsection (b) or in regulations promulgated pursu-*
17 *ant to such subsection shall be guilty of a felony and upon*
18 *conviction thereof shall be fined not more than \$25,000 or*
19 *imprisoned for not more than five years or both.*

20 *“(2) Whoever falsely assumes or pretends to be acting,*
21 *or misrepresents in any way that he is acting under the au-*
22 *thority of or in association with any program of health insur-*
23 *ance established by Federal statute for the purpose of selling*
24 *or attempting to sell insurance, or in such pretended charac-*
25 *ter demands, or obtains money, paper, documents, or any-*

1 *thing of value, shall be guilty of a felony and upon conviction*
2 *thereof shall be fined not more than \$25,000 or imprisoned*
3 *for not more than five years or both.*

4 “(e) *The Secretary shall make readily available to all*
5 *persons entitled to benefits under title XVIII (and to the*
6 *extent feasible, persons about to become so entitled) such in-*
7 *formation as will permit such persons to evaluate the value of*
8 *supplementary policies to them and the relationship of any*
9 *such policies to benefits provided under title XVIII.*

10 “(f)(1)(A) *The Secretary shall, in consultation with*
11 *Federal and State regulatory agencies, the National Associ-*
12 *ation of Insurance Commissioners (hereinafter referred to as*
13 *“NAIC”), private insurers, and organizations representing*
14 *consumers and the aged, conduct a comprehensive study and*
15 *evaluation of the comparative effectiveness of various State*
16 *approaches to the regulation of private supplementary health*
17 *insurance in: (i) limiting marketing and agent abuse, (ii)*
18 *assuring the dissemination of such information to individ-*
19 *uals entitled to benefits under title XVIII (and to other con-*
20 *sumers) as is necessary to permit informed choice, (iii) pro-*
21 *viding high value policies for such individuals, (iv) reducing*
22 *the purchase of unnecessary duplicative coverage, and (v) im-*
23 *proving price competition.*

24 “(B) *Such study and evaluation shall include regula-*
25 *tory approaches that provide for the use of: (i) minimum loss*

1 ratios; (ii) disclosure of information to prospective purchas-
2 ers; (iii) minimum benefit level standards; (iv) fixed benefit
3 standards; and (v) the NAIC Model Regulation To Imple-
4 ment the Individual Accident and Sickness Minimum
5 Standards Act.

6 “(C) Such study shall evaluate the extent to which
7 States adopt the amendments regarding medicare supplemen-
8 tary insurance to the NAIC Model Regulation approved by
9 the NAIC on June 6, 1979, how effectively such amend-
10 ments are implemented, and how successful States which
11 have adopted such amendments have been in achieving the
12 objectives described in subparagraph (A).

13 “(D) The Secretary shall, no later than July 1, 1981,
14 submit a report to the Congress on the results of such study
15 and evaluation (including data relating to the adoption, im-
16 plementation, and effectiveness of June 6, 1979, amendments
17 to the NAIC Model Regulation regarding medicare supple-
18 mentary insurance), accompanied by such recommendations
19 as the Secretary finds warranted by such results with respect
20 to the need for legislative or administrative changes to accom-
21 plish the objectives set forth in subparagraph (1)(A), includ-
22 ing the need for a mandatory Federal regulatory program to
23 assure the marketing of appropriate types of supplementary
24 policies, and such other means as he finds may be appropri-
25 ate to enhance effective State regulation of such policies.

1 “(2) *The Secretary shall submit to the Congress on*
 2 *January 1, 1982 and on each January 1 thereafter, an*
 3 *annual report evaluating the effectiveness of the certification*
 4 *procedure established under this section, and shall include in*
 5 *such reports an analysis of—*

6 “(A) *the impact of such procedure on the types,*
 7 *market share, value, and cost to persons entitled to*
 8 *benefits under title XVIII of this Act of supplemen-*
 9 *tary policies which have been certified by the*
 10 *Secretary;*

11 “(B) *the need for any changes in the certification*
 12 *procedure to improve its administration or effective-*
 13 *ness; and*

14 “(C) *whether the certification program should be*
 15 *continued.*

16 “(g) *The Secretary shall prescribe such regulations as*
 17 *may be necessary for the effective, efficient, and equitable*
 18 *administration of the certification procedure established*
 19 *under this section.”.*

20 *DEMONSTRATION PROJECTS RELATING TO THE TRAINING*
 21 *OF AID TO FAMILIES WITH DEPENDENT CHILDREN*
 22 *RECIPIENTS AS HOME HEALTH AIDES*

23 *SEC. 23. (a) The Secretary of Health, Education, and*
 24 *Welfare may enter into agreements with States, selected at*
 25 *his discretion, for the purpose of conducting demonstration*

1 projects for the training and employment of eligible partici-
2 pants as homemakers or home health aides, who shall provide
3 authorized services to elderly or disabled individuals, or other
4 individuals in need of such services, to whom such services
5 are not otherwise reasonably and actually available or pro-
6 vided, and who would, without the availability of such serv-
7 ices, be reasonably anticipated to require institutional care.

8 (b) For purposes of this section the term "eligible par-
9 ticipant" means an individual who has voluntarily applied
10 for participation and who, at the time such individual enters
11 the project established under this section, has been certified
12 by the appropriate agency of State or local government as
13 being eligible for financial assistance under a State plan ap-
14 proved under part A of title IV of the Social Security Act
15 and as having continuously received such financial assist-
16 ance during the ninety-day period which immediately pre-
17 cedes the date on which such individual enters such project
18 and who, within such ninety-day period, had not been em-
19 ployed as a homemaker or home health aide.

20 (c)(1) The Secretary shall enter into agreements under
21 this section with no more than twelve States. Priority shall
22 be given to States which have demonstrated interest in pro-
23 viding services of the type authorized under this section.

1 (2) *A State may apply to enter into an agreement under*
2 *this section in such manner and at such time as the Secre-*
3 *tary may prescribe.*

4 (3) *Any State entering into an agreement with the Sec-*
5 *retary under this section must—*

6 (A) *provide that the demonstration project shall be*
7 *administered by a State health services agency desig-*
8 *nated for this purpose by the Governor (which may be*
9 *the State agency administering or responsible for the*
10 *administration of the State plan for medical assistance*
11 *under title XIX of the Social Security Act);*

12 (B) *provide that the agency designated pursuant*
13 *to subparagraph (A) shall, to the maximum extent fea-*
14 *sible, arrange for coordinating its activities under the*
15 *agreement with activities of other State agencies*
16 *having related responsibilities;*

17 (C) *establish a formal training program, which*
18 *meets such standards as the Secretary may establish to*
19 *assure the adequacy of such program, to prepare eligi-*
20 *ble participants to provide part-time and intermittent*
21 *homemaker services or home health aide services to in-*
22 *dividuals who are elderly, disabled, or otherwise in*
23 *need of such services;*

24 (D) *provide for the full-time employment of those*
25 *eligible participants who successfully complete the*

1 *training program with one or more public agencies (or,*
2 *by contract, with private bona fide nonprofit agencies)*
3 *as homemakers or home health aides, rendering author-*
4 *ized services, under the supervision of persons deter-*
5 *mined by the State to be qualified to supervise the per-*
6 *formance of such services, to individuals described in*
7 *subsection (a) at wage levels comparable to the prevail-*
8 *ing wage levels in the area for similar work;*

9 *(E) provide that such services provided under*
10 *subparagraph (D) shall be made available without*
11 *regard to income of the individual requiring such serv-*
12 *ices, but that a reasonable fee will be charged (on a*
13 *sliding scale basis) for such services provided to indi-*
14 *viduals who have income in excess of 200 percent of*
15 *the needs standard in such State under the State plan*
16 *approved under part A of title IV of the Social Secu-*
17 *rity Act for a household of the same size as such indi-*
18 *vidual's household;*

19 *(F) provide for a system of continuing independ-*
20 *ent professional review by an appropriate panel, which*
21 *is not affiliated with the entity providing the services*
22 *involved, to assure that services are provided only to*
23 *individuals reasonably determined to be in need of*
24 *such supportive services;*

1 (G) provide for evaluation of the project and
2 review of all agencies providing services under the
3 project;

4 (H) submit periodic reports to the Secretary as he
5 may require; and

6 (I) meet such other requirements as the Secretary
7 may establish for the proper and efficient implementa-
8 tion of the project.

9 (4) The number of participants in any project shall not
10 exceed that number which the Secretary determines to be rea-
11 sonable, based upon the capability of the agencies involved to
12 train, employ, and properly utilize eligible participants.
13 Such number may be appropriately modified, subsequently,
14 with the approval of the Secretary.

15 (5) Any contract with a private bona fide nonprofit
16 agency entered into pursuant to paragraph (3)(D) shall pro-
17 vide for reasonable reimbursement of such agencies for serv-
18 ices on a basis proportionate to the amount of time allocated
19 to individuals eligible to receive such services under this sec-
20 tion (and, in case such agency is an institution, the amount
21 of the reimbursement shall not exceed the amount of reim-
22 bursement which would have been payable if the services in-
23 volved had been provided by a free-standing agency).

24 (6) For purposes of this section, a facility of the Veter-
25 ans' Administration shall, at the request of the Administrator

1 of Veterans' Affairs, be considered to be a public agency. In
 2 the case of any such facility which is so considered to be a
 3 public agency, of the costs determined under this section
 4 which are attributable to such facility, 90 percent shall be
 5 paid by the State and 10 percent by the Veterans'
 6 Administration.

7 (d)(1) For purposes of this section, authorized home-
 8 maker and home health aid services include part-time or
 9 intermittent—

10 (A) personal care, such as bathing, grooming, and
 11 toilet care;

12 (B) assisting patients having limited mobility;

13 (C) feeding and diet assistance;

14 (D) home management, housekeeping, and
 15 shopping;

16 (E) health-oriented recordkeeping;

17 (F) family planning services; and

18 (G) simple procedures for identifying potential
 19 health problems.

20 (2) Such authorized services do not include any services
 21 performed in an institution, or any services provided under
 22 circumstances where institutionalization would be substan-
 23 tially more efficient as a means of providing such services.

24 (e)(1) Agreements shall be entered into under this sec-
 25 tion between the Secretary and the State agency designated

1 by the Governor. Under such agreement the Secretary shall
2 pay to the State, as an additional payment under section
3 1903 of such Act for each quarter, an amount equal to 90
4 percent of the reasonable costs incurred (less the Federal
5 share of any related fees collected) by such State during such
6 quarter in carrying out a demonstration project under this
7 section, including reasonable wages and other employment
8 costs of eligible participants employed full time under such
9 project (and, for purposes of determining the amount of such
10 additional payment, the 10 percent referred to in subsection
11 (c)(6), paid by the Veterans' Administration, shall be deemed
12 to be a cost incurred by the State in carrying out such a
13 project).

14 (2) Demonstration projects under this section shall be of
15 a maximum duration of four years, plus an additional time
16 period of up to six months for planning and development, and
17 up to six months for final evaluation and reporting. Federal
18 funding under this subsection shall not be available for the
19 employment of any eligible participant under the project after
20 such participant has been employed for a period of three
21 years.

22 (f) For purposes of title IV of the Social Security Act,
23 any eligible participant taking part in a training program
24 under a project authorized under this section shall be deemed

1 to be participating in a work incentive program established
2 by part C of such title.

3 (g) For the first year (and such additional immediately
4 succeeding period as the State may specify) during which an
5 eligible participant is employed under the project established
6 under this section, such participant shall, notwithstanding
7 any other provision of law, retain any eligibility for medical
8 assistance under a State plan approved under title XIX of
9 the Social Security Act, and any eligibility for social and
10 supportive services provided under the State plan approved
11 under part A of title IV of such Act, which such participant
12 had at the time such participant entered the training program
13 established under this section.

14 (h) The Secretary shall submit annual reports to the
15 Congress evaluating the demonstration projects carried out
16 under this section, and shall submit a final report to the Con-
17 gress not less than six months after he has received the final
18 reports from all States participating in such projects.

19 (i) The Secretary shall, and is hereby authorized to,
20 waive such requirements, including formal solicitation and
21 approval requirements, as will further expeditious and effec-
22 tive implementation of this section.

1 REIMBURSEMENT FOR HEALTH MAINTENANCE

2 ORGANIZATIONS

3 SEC. 24. (a) *Section 1876 of the Social Security Act is*

4 *amended to read as follows:*

5 “PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS

6 “SEC. 1876. (a)(1) *The Secretary shall annually deter-*

7 *mine a per capita rate of payment—*

8 “(A) *for each class of individuals who are en-*

9 *rolled (in accordance with this section) with a health*

10 *maintenance organization which has entered into a*

11 *contract under this section and who are entitled to*

12 *benefits under part A and enrolled under part B; and*

13 “(B) *for each class of individuals who are so en-*

14 *rolled with such an organization and who are enrolled*

15 *under part B only.*

16 *Such rate for each class shall be equal to 95 percent of th*

17 *adjusted average per capita cost for that class.*

18 “(2) *For purposes of this section, the term ‘adjusted*

19 *average per capita cost’ means the average per capita amount*

20 *that the Secretary estimates in advance (on the basis of*

21 *actual experience, or retrospective actuarial equivalent based*

22 *upon an adequate sample and other information and data, in*

23 *a geographic area served by a health maintenance organiza-*

24 *tion or in a similar area, with appropriate adjustments to*

25 *assure actuarial equivalence) would be payable in any con-*

1 tract year for services covered under parts A and B, or part
2 B only, and types of expenses otherwise reimbursable under
3 parts A and B, or part B only (including administrative
4 costs incurred by organizations described in sections 1816
5 and 1842), if the services were to be furnished by other than
6 a health maintenance organization or, in the case of services
7 covered only under section 1861(s)(2)(G), if the services
8 were to be furnished by a physician or as an incident to a
9 physician's service.

10 “(3) In establishing classes of individuals for purposes
11 of this subsection, the Secretary shall take into consideration
12 such factors as age, sex, institutional status, disability
13 status, and place of residence.

14 “(4) After determining under paragraph (1) the rate of
15 payment to be utilized with respect to a health maintenance
16 organization, the Secretary shall make monthly payments, in
17 advance and in accordance with such rate, except as provided
18 in subsection (i)(2), to such organization for each individual
19 enrolled in accordance with this section with the organiza-
20 tion. Such payments shall be in lieu of payments which (in
21 the absence of the contract entered into under this section)
22 would be payable otherwise pursuant to section 1814(b) or
23 1833(a) for services furnished by or through the organization
24 to individuals enrolled with the organization and entitled to

1 *benefits under part A and enrolled under part B or enrolled*
2 *under part B only.*

3 “(5) *The payment to a health maintenance organization*
4 *under this subsection for individuals enrolled in accordance*
5 *with this section with the organization and entitled to benefits*
6 *under part A and enrolled under part B shall be made from*
7 *the Federal Hospital Insurance Trust Fund and the Federal*
8 *Supplementary Medical Insurance Trust Fund. The portion*
9 *of that payment to the organization for a month to be paid by*
10 *the latter trust fund shall be equal to 200 percent of the sum*
11 *of—*

12 “(A) *the product of (i) the number of such indi-*
13 *viduals for the month who have attained age 65, and*
14 *(ii) the monthly actuarial rate for supplementary medi-*
15 *cal insurance for the month as determined under sec-*
16 *tion 1839(c)(1); and*

17 “(B) *the product of (i) the number of such indi-*
18 *viduals for the month who have not attained age 65,*
19 *and (ii) the monthly actuarial rate for supplementary*
20 *medical insurance for the month as determined under*
21 *section 1839(c)(4).*

22 *The remainder of that payment shall be paid by the former*
23 *trust fund.*

24 “(b)(1) *For purposes of this section, the term ‘health*
25 *maintenance organization’ means a legal entity which pro-*

1 *vides services in the manner prescribed by section 1301(b) of*
2 *the Public Health Service Act and is organized and operated*
3 *in the manner prescribed by section 1301(c) of the Public*
4 *Health Service Act, except that—*

5 “(A) *solely for the purposes of this section—*

6 “(i) *the term ‘basic health services’ and ref-*
7 *erences thereto shall be deemed to refer to the*
8 *services and benefits included in parts A and B*
9 *of this title;*

10 “(ii) *the additional nominal payments au-*
11 *thorized by section 1301(b)(1)(D) of the Public*
12 *Health Service Act shall not exceed the limits ap-*
13 *plicable under subsection (g) of this section; and*

14 “(iii) *the organization provides the services*
15 *covered under parts A and B through institutions,*
16 *entities, and persons meeting the applicable re-*
17 *quirements of section 1861; and*

18 “(B) *with respect to the enrollment of individuals*
19 *with the organization under this section—*

20 “(i) *subsections (c)(4) and (d) of section*
21 *1301 of the Public Health Service Act shall not*
22 *apply, and*

23 “(ii) *the organization shall have an open en-*
24 *rollment period of reasonable duration at least*
25 *every year during which it accepts up to the*

1 *limits of its capacity and without restrictions,*
2 *except as may be authorized in regulations, indi-*
3 *viduals who are eligible to enroll under subsection*
4 *(d) in the order in which they apply for enroll-*
5 *ment, unless to do so would result in failure to*
6 *meet the requirements of subsection (h) or would*
7 *result in the enrollment of enrollees substantially*
8 *nonrepresentative, as determined in accordance*
9 *with regulations of the Secretary, of the popula-*
10 *tion in the geographic area served by such*
11 *organization.*

12 “(2)(A) *The administration of the duties and functions*
13 *of the Secretary, insofar as they involve making determina-*
14 *tions as to whether an organization is a health maintenance*
15 *organization within the meaning of paragraph (1), shall be*
16 *integrated with the administration of title XIII of the Public*
17 *Health Service Act.*

18 “(B) *Except as provided in subparagraph (A), the*
19 *Secretary shall administer the provisions of this section*
20 *through the Administrator of the Health Care Financing*
21 *Administration.*

22 “(c) *If an individual is enrolled in accordance with this*
23 *section with a health maintenance organization, only the*
24 *health maintenance organization shall be entitled to receive*

1 *payments from the Secretary under this title for services fur-*
2 *nished to the individual.*

3 “(d) *Subject to the provisions of subsection (e), every*
4 *individual entitled to benefits under part A and enrolled*
5 *under part B or enrolled under part B only (other than an*
6 *individual medically determined to have end-stage renal dis-*
7 *ease) shall be eligible to enroll under this section with any*
8 *health maintenance organization with which the Secretary*
9 *has entered into a contract under this section and which*
10 *serves the geographic area in which the individual resides.*

11 “(e)(1) *An individual may enroll under this section*
12 *with a health maintenance organization as may be prescribed*
13 *in regulations and may terminate his enrollment with the*
14 *health maintenance organization as of the beginning of the*
15 *first calendar month following a full calendar month after the*
16 *request is made for such termination.*

17 “(2) *The Secretary may prescribe the procedures and*
18 *conditions under which a health maintenance organization*
19 *that has entered into a contract with the Secretary under this*
20 *subsection may inform individuals eligible to enroll under*
21 *this section with the organization about the organization, or*
22 *may enroll such individuals with the organization.*

23 “(f) *Any individual enrolled with a health maintenance*
24 *organization under this section who is dissatisfied by reason*
25 *of his failure to receive any health service to which he be-*

1 *lieves he is entitled and at no greater charge than he believes*
2 *he is required to pay shall, if the amount in controversy is*
3 *\$100 or more, be entitled to a hearing before the Secretary to*
4 *the same extent as is provided in section 205(b), and in any*
5 *such hearing the Secretary shall make the health mainte-*
6 *nance organization a party. If the amount in controversy is*
7 *\$1,000 or more, the individual or health maintenance organi-*
8 *zation shall, upon notifying the other party, be entitled to*
9 *judicial review of the Secretary's final decision as provided*
10 *in section 205(g), and both the individual and the health*
11 *maintenance organization shall be entitled to be parties to*
12 *that judicial review.*

13 “(g)(1) *In no case may—*

14 “(A) *the portion of a health maintenance organi-*
15 *zation's premium rate and the actuarial value of its de-*
16 *ductibles, coinsurance, and copayments charged (with*
17 *respect to services covered under parts A and B) to in-*
18 *dividuals who are enrolled in accordance with this sec-*
19 *tion with the organization and who are entitled to*
20 *benefits under part A and enrolled under part B, or*

21 “(B) *the portion of its premium rate and the actu-*
22 *arial value of its deductibles, coinsurance, and copay-*
23 *ments charged (with respect to services covered under*
24 *part B) to individuals who are enrolled in accordance*

1 with this section with the organization and enrolled
 2 under part B only
 3 exceed the actuarial value of the coinsurance and deductibles
 4 that would be applicable on the average to individuals en-
 5 rolled in accordance with this section with the organization
 6 (or, if the Secretary finds that adequate data are not availa-
 7 ble to determine that actuarial value, other appropriate data)
 8 and entitled to benefits under part A and enrolled under part
 9 B, or enrolled under part B only, respectively, if they were
 10 not members of a health maintenance organization.

11 “(2) If the health maintenance organization provides to
 12 its enrollees under this section services in addition to services
 13 covered under parts A and B of this title, election of coverage
 14 for such additional services shall be optional for such enroll-
 15 ees and such organization shall furnish such enrollees with
 16 information of a portion of its premium rate or other charges
 17 applicable to such additional services. In no case may—

18 “(A) the portion of such organization’s premium
 19 rate charged, with respect to such additional services,
 20 to individuals enrolled in accordance with this section,
 21 and

22 “(B) the actuarial value of its deductibles, coin-
 23 surance, and copayments charged, with respect to such
 24 services, to such individuals
 25 exceed the adjusted community rate for such services.

1 “(3) For purposes of this section, the term ‘adjusted
2 community rate’ for a service means the rate of payment for
3 that service which the Secretary annually estimates would
4 apply to an individual enrolled in accordance with this sec-
5 tion with a health maintenance organization if the rate of
6 payment were determined under a ‘community rating system’
7 (as defined in section 1302(8) of the Public Health Service
8 Act, other than subparagraph (C)), but adjusted for differ-
9 ences between the utilization characteristics of the individ-
10 uals enrolled with the health maintenance organization under
11 this section and the utilization characteristics of the other
12 members of the organization (or, if the Secretary finds that
13 adequate data are not available to adjust for those differences,
14 the differences between the utilization characteristics of indi-
15 viduals in other health maintenance organizations, or indi-
16 viduals in the area, in the State, or in the United States,
17 eligible to enroll under this section with a health mainte-
18 nance organization and the utilization characteristics of the
19 rest of the population in the area, in the State, or in the
20 United States, respectively).

21 “(4) Notwithstanding any other provision of law, the
22 health maintenance organization may (in the case of the pro-
23 vision of services to an individual enrolled in accordance
24 with this section for an illness or injury for which the
25 member is entitled to benefits under a workman’s compensa-

1 tion law or under an automobile insurance policy) charge or
2 authorize the provider of such services to charge, in accord-
3 ance with the charges allowed under such law or policy—

4 “(A) the insurance carrier, employer, or other
5 entity which under such law or policy is to pay for the
6 provision of such services, or

7 “(B) such member to the extent that such member
8 has been paid under such law or policy for such
9 services.

10 “(h)(1) Except as provided in paragraph (2), each
11 health maintenance organization with which the Secretary
12 enters into a contract under this section shall have, for the
13 duration of such contract, an enrolled membership at least
14 half of which consists of individuals who are not entitled to
15 benefits under this title or under a State plan approved under
16 title XIX.

17 “(2) The Secretary may modify or waive the require-
18 ment described in paragraph (1) in circumstances which, as
19 determined by the Secretary, warrant special consideration
20 (and may take into account, in determining whether to
21 modify or waive that requirement, the reasonableness of the
22 organization’s premium rate and other charges for members
23 entitled to benefits under this title or under a State plan
24 approved under title XIX); except that the Secretary may
25 make such a modification or waiver only on the condition

1 *that the health maintenance organization will not have, for*
2 *the duration of such contract, an enrolled membership of*
3 *which one-half or more are individuals entitled to benefits*
4 *under part A or enrolled under part B.*

5 “(i)(1) *The Secretary may enter into a contract with*
6 *any health maintenance organization, as defined in subsec-*
7 *tion (b)(1), for the purpose of carrying out this section.*

8 “(2) *Each contract shall provide that—*

9 “(A) *if the adjusted community rate, as defined*
10 *in subsection (g)(3), for services covered under parts A*
11 *and B (as reduced for the actuarial value of the coin-*
12 *surance and deductibles under those parts) for individ-*
13 *uals enrolled in accordance with this section with the*
14 *organization and entitled to benefits under part A and*
15 *enrolled in part B, or*

16 “(B) *if such adjusted community rate for services*
17 *under part B (as reduced for the actuarial value of the*
18 *coinsurance and deductibles under that part) for indi-*
19 *viduals enrolled in accordance with this section with*
20 *the organization and enrolled under part B only*

21 *is less than the average of the per capita rates of payment to*
22 *be made under subsection (a)(1) at the beginning of an*
23 *annual contract period for individuals enrolled in accordance*
24 *with this section with the organization and entitled to benefits*
25 *under part A and enrolled in part B, or enrolled in part B*

1 only, respectively, the health maintenance organization shall
2 provide to each individual enrolled in accordance with this
3 section with the organization and entitled to benefits under
4 part A and enrolled in part B, or enrolled in part B, respec-
5 tively, additional benefits which are selected by the health
6 maintenance organization and which the Secretary finds are
7 at least equal in value to the difference between the average
8 per capita payment and the adjusted community rate (as so
9 reduced); except that this paragraph shall not apply with re-
10 spect to any organization which elects to receive a lesser pay-
11 ment to the extent that there is no longer a difference between
12 the average per capita payment and adjusted community rate
13 (as so reduced). If the Secretary finds that there is insuffi-
14 cient enrollment experience to determine an average of the
15 per capita rates of payment to be made under subsection
16 (a)(1) at the beginning of a contract period, the Secretary
17 may determine such an average based on the enrollment ex-
18 perience of other contracts entered into under this section.

19 “(3) Such additional benefits shall be (A) the reduction
20 of the premium rate or other charges made with respect to
21 services furnished by the organization to individuals enrolled
22 under this section, or (B) the provision of additional benefits
23 described as basic or supplemental health services in section
24 1302 of the Public Health Service Act, or both.

1 “(4) Each contract under this section shall be for a term
2 of at least one year, as determined by the Secretary, and may
3 be made automatically renewable from term to term in the
4 absence of notice by either party of intention to terminate at
5 the end of the current term; except that the Secretary may
6 terminate any such contract at any time (after such reason-
7 able notice and opportunity for hearing to the health mainte-
8 nance organization involved as he may provide in regula-
9 tions), if he finds the organization (A) has failed substan-
10 tially to carry out the contract, (B) is carrying out the con-
11 tract in a manner inconsistent with the efficient and effective
12 administration of this section, or (C) no longer substantially
13 meets the applicable conditions of subsection (b).

14 “(5) The effective date of any contract executed pursu-
15 ant to this subsection shall be specified in the contract.

16 “(6) Each contract under this section—

17 “(A) shall provide that the Secretary, or any
18 person or organization designated by him—

19 “(i) shall have right to inspect or otherwise
20 evaluate the quality, appropriateness, and timeli-
21 ness of services performed under the contract, and

22 “(ii) shall have right to audit and inspect
23 any books and records of the health maintenance
24 organization that pertain (I) to the capacity of the
25 organization to bear the risk of potential financial

1 losses, and (II) to services performed or determi-
2 nations of amounts payable under the contract,

3 “(B) shall require the organization to provide
4 (and pay for) written notice in advance of the con-
5 tract’s termination, as well as a description of alterna-
6 tives for obtaining benefits under this title, to each in-
7 dividual enrolled under this section with the
8 organization,

9 “(C) shall require the organization to comply with
10 subsections (a) and (c) of section 1318 of the Public
11 Health Service Act, and

12 “(D) shall contain such other terms and condi-
13 tions not inconsistent with this section as the Secretary
14 may find necessary.

15 “(7) The Secretary may not enter into contract with a
16 health maintenance organization under this section if a
17 former contract with that organization under this section was
18 terminated at the request of the organization within the pre-
19 ceding five-year period, except in circumstances which war-
20 rant special consideration, as determined by the Secretary.

21 “(8) The authority vested in the Secretary by this sub-
22 section may be performed without regard to such provisions
23 of law or regulations relating to the making, performance,
24 amendment, or modification of contracts of the United States

1 *as the Secretary may determine to be inconsistent with the*
2 *furtherance of the purpose of this title.”.*

3 *(b) Section 1861(s)(2) of such Act is amended—*

4 *(1) by striking out “and” in subparagraph (E);*

5 *(2) by inserting “and” after the semicolon in sub-*
6 *paragraph (F); and*

7 *(3) by adding after subparagraph (F) the follow-*
8 *ing new subparagraph:*

9 *“(G) services furnished pursuant to a contract*
10 *under section 1876 to a member of a health mainte-*
11 *nance organization by a physician assistant or by a*
12 *nurse practitioner and such services and supplies fur-*
13 *nished as an incident to his service to such a member*
14 *as would otherwise be covered under this part if fur-*
15 *nished by a physician or as an incident to a physi-*
16 *cian’s service;”.*

17 *(c) Section 1861(aa) of such Act is amended—*

18 *(1) by striking out “, for purposes of paragraphs*
19 *(1) and (2),” in paragraph (3);*

20 *(2) by redesignating paragraph (3) as subsection*
21 *(bb) of section 1861; and*

22 *(3) by inserting the following subsection heading*
23 *after and below paragraph (2): “Physician Assistant*
24 *and Nurse Practitioner”.*

1 (d) *The amendments made by this section shall apply*
2 *with respect to services furnished on or after the first day of*
3 *the thirteenth calendar month which begins after the date of*
4 *enactment of this Act, or earlier with respect to any health*
5 *maintenance organization if the organization so requests and*
6 *the Secretary of Health, Education, and Welfare agrees,*
7 *except that such amendments shall not apply—*

8 (1) *with respect to services furnished by a health*
9 *maintenance organization to any individual who is en-*
10 *rolled with that organization and entitled to benefits*
11 *under part A, or enrolled in part B, of title XVIII of*
12 *the Social Security Act at the time the organization*
13 *first enters into a contract subject to the amendments*
14 *made by this section, unless—*

15 (A) *the individual requests at any time that*
16 *the amendments apply, or*

17 (B) *the Secretary determines at any time*
18 *that the amendments should apply to all members*
19 *of the health maintenance organization because of*
20 *administrative costs or other administrative bur-*
21 *dens involved and so informs in advance each af-*
22 *fected member of the health maintenance organi-*
23 *zation, or*

24 (2) *with respect to services furnished by a health*
25 *maintenance organization during the five-year period*

1 beginning with the date of enactment of this Act, if a
2 contract between the organization and the Secretary of
3 Health, Education, and Welfare under section
4 1876(i)(2)(A) of the Social Security Act was in effect
5 immediately before the date of the enactment of this
6 Act, unless the organization requests that the amend-
7 ments apply earlier.

8 (e) The Secretary shall conduct a study of the addition-
9 al benefits selected by health maintenance organizations pur-
10 suant to section 1876(i)(2) of the Social Security Act, as
11 added by subsection (a) of this section. The Secretary shall
12 report to the Congress within 24 months of the date of the
13 enactment of this Act with respect to the findings and conclu-
14 sions made as a result of such study.

15 (f) The Secretary shall conduct a study evaluating the
16 extent of, and reasons for, the termination by medicare bene-
17 ficiaries of their memberships in health maintenance organi-
18 zations. In conducting such study, the Secretary shall place
19 special emphasis on the quantity and quality of medical care
20 provided in health maintenance organizations and the quality
21 of such care when provided on a fee-for-service basis. The
22 Secretary shall submit an interim report to the Congress,
23 within 2 years from the date of the enactment of this Act, and
24 a final report within 5 years from such date containing the

1 *interim and final, respectively, findings and conclusions*
2 *made as a result of such study.*

3 *QUALITY ASSURANCE PROGRAMS FOR CLINICAL*
4 *LABORATORIES*

5 *SEC. 25. Title XI of the Social Security Act is amend-*
6 *ed—*

7 *(1) by striking “1977” and inserting “1980” in*
8 *lieu thereof in section 1123(a), and*

9 *(2) by adding the following new section after the*
10 *section added by section 17 of this Act:*

11 *“COORDINATION OF QUALITY ASSURANCE PROGRAMS FOR*
12 *CLINICAL LABORATORIES*

13 *“SEC. 1129. (a) For the purpose of promoting the effi-*
14 *cient, effective, and consistent application of quality assur-*
15 *ance standards for clinical laboratories certified for partici-*
16 *pation in the programs established by titles V, XVIII, and*
17 *XIX of this Act and for clinical laboratories subject to the*
18 *provisions of section 353 of the Public Health Service Act,*
19 *the Secretary shall, consistent with the authority provided*
20 *under sections 1861(e) and 1861(s) of this Act for the certifi-*
21 *cation of clinical laboratories and with the authority provided*
22 *under section 353 of the Public Health Service Act for the*
23 *licensure of clinical laboratories engaged in interstate com-*
24 *merce, provide for the application of uniform quality assur-*
25 *ance standards under such Acts with respect to the classes of*



1 *clinical laboratories. In promulgating such standards, the*
2 *Secretary shall include requirements with respect to such*
3 *personnel in such clinical laboratories as he determines are*
4 *necessary to assure the consistent performance by clinical*
5 *laboratories of reliable, accurate laboratory tests and other*
6 *procedures and services performed by such clinical laborato-*
7 *ries.*

8 “(b) *The Secretary shall take such administrative ac-*
9 *tions as are necessary to provide for the uniform and consist-*
10 *ent application of such quality assurance standards and shall*
11 *periodically report to the Congress on such actions and their*
12 *effectiveness in accomplishing the purpose of this section.”*

